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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 29, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM JOHN L.¹,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

No. 1:22-CV-03179-SAB

**ORDER REVERSING DECISION OF
COMMISSIONER**

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for social security benefits. Plaintiff is represented by D. James Tree; Defendant is represented by Franco Becia, Michelle Pavelek, and Brian M. Donovan.

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for Supplemental Security Income (SSI) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382.²

¹Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff's name is partially redacted.

²The caption reflects the legal name, but Plaintiff uses she/her pronouns and the name "Willma."

1 After reviewing the administrative record and briefs filed by the parties, the Court
2 is now fully informed and reverses the decision of the Commissioner.

3 **I. Jurisdiction**

4 In February 2020, Plaintiff filed an application for disability insurance
5 benefits and an application for supplemental security income, with onset of June 1,
6 2019. Plaintiff's application was denied initially and on reconsideration. On
7 September 9, 2021, Plaintiff appeared and testified by telephone before ALJ Mark
8 Baker, with the assistance of her counsel, D. James Tree. Robert W. Lester, Jr.,
9 vocational expert, also participated. The ALJ issued a decision on October 22,
10 2021, finding Plaintiff was not disabled.

11 Plaintiff requested review by the Appeals Council; the Appeals Council
12 denied the request on September 23, 2022. The Appeals Council's denial of review
13 makes the ALJ's decision the "final decision" of the Commissioner of Social
14 Security, which this Court is permitted to review. 42 U.S.C. §§ 405(g),
15 1383(c)(1)(3).

16 Plaintiff filed a timely appeal with the United States District Court for the
17 Eastern District of Washington on November 16, 2022. ECF No. 1. The matter is
18 before this Court pursuant to 42 U.S.C. § 405(g).

19 **II. Five-Step Sequential Evaluation Process**

20 The Social Security Act defines disability as the "inability to engage in any
21 substantial gainful activity by reason of any medically determinable physical or
22 mental impairment which can be expected to result in death or which has lasted or
23 can be expected to last for a continuous period of not less than twelve months." 42
24 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
25 under a disability only if their impairments are of such severity that the claimant is
26 not only unable to do their previous work, but cannot, considering claimant's age,
27 education, and work experiences, engage in any other substantial gainful work that
28 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The

1 Commissioner has established a five-step sequential evaluation process to
 2 determine whether a person is disabled in the statute. See 20 C.F.R. §§
 3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v).

4 **Step One:** Is the claimant engaged in substantial gainful activities? 20
 5 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work
 6 done for pay and requires compensation above the statutory minimum. *Keyes v.*
 7 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
 8 substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b), 416.920(b). If
 9 the claimant is not, the ALJ proceeds to step two.

10 **Step Two:** Does the claimant have a medically-severe impairment or
 11 combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A
 12 severe impairment is one that lasted or must be expected to last for at least 12
 13 months and must be proven through objective medical evidence. *Id.* §§ 404.1509,
 14 416.909. If the claimant does not have a severe impairment or combination of
 15 impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii),
 16 416.920(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third
 17 step.

18 **Step Three:** Does the claimant's impairment meet or equal one of the listed
 19 impairments acknowledged by the Commissioner to be so severe as to preclude
 20 substantial gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If
 21 the impairment meets or equals one of the listed impairments, the claimant is
 22 conclusively presumed to be disabled. 20 C.F.R. §§ 404.1520(d), 416.920(d). If the
 23 impairment is not one conclusively presumed to be disabling, the evaluation
 24 proceeds to the fourth step.

25 Before considering to the fourth step, the ALJ must first determine the
 26 claimant's residual functional capacity. An individual's residual functional
 27 capacity is their ability to do physical and mental work activities on a sustained
 28 basis despite limitations from their impairments. 20 C.F.R. §§ 404.1545(a)(1),

1 416.945(a)(1). The residual functional capacity is relevant to both the fourth and
2 fifth steps of the analysis.

3 **Step Four:** Does the impairment prevent the claimant from performing work
4 they have performed in the past? 20 C.F.R. §§ 404.1520(a)(4)(iv),
5 416.920(a)(4)(iv). If the claimant is able to perform their previous work, they are
6 not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant cannot perform
7 this work, the evaluation proceeds to the fifth and final step.

8 **Step Five:** Is the claimant able to perform other work in the national
9 economy in view of their age, education, and work experience? 20 C.F.R. §§
10 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the
11 claimant to establish a *prima facie* case of entitlement to disability benefits. *Tackett*
12 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant
13 establishes that a physical or mental impairment prevents him from engaging in her
14 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to
15 show that the claimant can perform other substantial gainful activity. *Id.*

16 **III. Standard of Review**

17 The Commissioner's determination will be set aside only when the ALJ's
18 findings are based on legal error or are not supported by substantial evidence in the
19 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
20 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
21 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"
22 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
23 evidence is "such relevant evidence as a reasonable mind might accept as adequate
24 to support a conclusion." *Richardson*, 402 U.S. at 401.

25 A decision supported by substantial evidence will be set aside if the proper
26 legal standards were not applied in weighing the evidence and making the decision.
27 *Brawner v. Secr'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
28 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the

1 ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d
 2 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ's denial of benefits if
 3 the evidence is susceptible to more than one rational interpretation, one of which
 4 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d
 5 1190, 1193 (9th Cir. 2004). It "must consider the entire record as a whole,
 6 weighing both the evidence that supports and the evidence that detracts from the
 7 Commissioner's conclusion, and may not affirm simply by isolating a specific
 8 quantum of supporting evidence." *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
 9 2017) (quotation omitted). "If the evidence can support either outcome, the court
 10 may not substitute its judgment for that of the ALJ." *Matney*, 981 F.2d at 1019.

11 **IV. Statement of Facts**

12 The facts have been presented in the administrative record, the ALJ's
 13 decision, and the briefs to this Court. Only the most relevant facts are summarized
 14 herein.

15 Plaintiff graduated from high school and attended technical school for diesel
 16 mechanics. She reported that she attended special education throughout her time in
 17 school and her family indicated to evaluators they believed she was
 18 developmentally disabled. Plaintiff has an IQ of 65. She has difficulty completing
 19 psychological testing and has shown poor judgment and insight.

20 Plaintiff was arrested when she would not comply with the police and leave
 21 a dwelling on her property that was deemed uninhabitable. On November 18, 2019,
 22 Eastern State Hospital conducted a forensic evaluation. The evaluator concluded
 23 that Plaintiff may have a mental disease or defect and did not have the capacity to
 24 understand the proceedings against her or to participate in her own defense. It was
 25 reported that she presented with disorganized thought process and a loose
 26 association with reality, making bizarre statements about her family and the nature
 27 of her pending charges.

28 Plaintiff has previously worked as a field laborer. Her most recent

1 employment was driving truck for a family friend, and she ended up getting fired
 2 after an accident.

3 V. The ALJ's Findings

4 The ALJ issued an opinion affirming denial of benefits. AR 16-30. At step
 5 one, the ALJ found that Plaintiff has not engaged in substantial gainful activity
 6 since June 1, 2019, the alleged onset date. AR 19.

7 At step two, the ALJ identified the following severe impairments: major
 8 depressive disorder, anxiety, and borderline intellectual functioning. AR 19.

9 At step three, the ALJ found that Plaintiff did not have an impairment or
 10 combination of impairments that meets or medically equals the severity of one of
 11 the listed impairments. AR 19. Ultimately, the ALJ concluded that Plaintiff has a
 12 residual function capacity ("RFC") to perform:

13 a full range of work at all exertional levels but with the following non-
 14 exertional limitations: background noise limited to moderate, which is
 15 like a business office, department store, grocery store, or light
 16 traffic. She is able to concentrate in the workplace for two hours
 17 before requiring a break. She is limited to performing simple, routine
 18 tasks. She is able to occasionally interact with supervisors and
 19 coworkers, and occasionally interact with the general public. She is
 20 able to frequently respond appropriately to changes in a routine work
 setting. She requires a low stress work environment, defined as
 requiring only occasional independent decisionmaking or use of work-
 related judgement and no responsibility for the safety of others.).

21 AR 23.

22 At step four, the ALJ found that Plaintiff was capable of past relevant work
 23 as a field laborer. AR 29.

24 In the alternative, at step five, the ALJ found that Plaintiff was not disabled
 25 and capable of performing work that exists in significant numbers in the national
 26 economy, such as stores laborer, router, and addresser. AR 30.

27 VI. Discussion

28 The ALJ relied on the fact that Plaintiff completed "four years of college"

1 and worked for one employer for 5 years. Neither is true. Plaintiff did graduate
2 from high school, although she attended special education class throughout her
3 schooling. She attended technical school for diesel mechanics and refers to another
4 2 years in Wyoming, but this does not equate to four years of college. Moreover, it
5 does not appear that she ever completed a degree. The five year “employment”
6 involved working for a family friend. The ALJ also believed that Plaintiff was
7 mortgaging a home. This does not appear to be true, given that Plaintiff repeatedly
8 indicated she was homeless or living with friends and relatives, and it appears prior
9 to her arrest, she was living in a shop on her grandparent’s property and the house
10 there was deemed inhabitable. Notably, these statements were relayed by Plaintiff
11 to her treatment providers. Based on the longitudinal record, it is clear they
12 reflected delusional thinking on the part of Plaintiff. Yet, for some reason, the ALJ
13 cited these delusional statements as evidence that Plaintiff can perform full-time
14 work.

15 **a. Dr. Genthe’s Opinion**

16 The ALJ found Dr. Genthe’s opinion to not be persuasive, notwithstanding
17 that Dr. Genthe observed Plaintiff and administered several psychological tests.

18 In evaluating medical opinion evidence, the ALJ considers the
19 persuasiveness of each medical opinion and prior administrative medical finding
20 from medical sources. 20 C.F.R. § 416.920c(a) and (b) The ALJ is required to
21 consider multiple factors, including supportability, consistency, the source’s
22 relationship with the claimant, any specialization of the source, and other factors
23 (such as the source’s familiarity with other evidence in the file or an understanding
24 of Social Security’s disability program). 20 C.F.R. § 416.920c(c)(1)-(5).

25 Supportability and consistency of an opinion are the most important factors, and
26 the ALJ must articulate how they considered those factors in determining the
27 persuasiveness of each medical opinion or prior administrative medical finding. 20
28 C.F.R. § 416.920c(b)(2). The ALJ may explain how they considered the other

1 factors, but is not required to do so, except in cases where two or more opinions
2 are equally well-supported and consistent with the record. *Id.*

3 Supportability and consistency are further explained in the regulations:

4 (1) Supportability.

5 The more relevant the objective medical evidence and supporting
6 explanations presented by a medical source are to support his or her medical
7 opinion(s) or prior administrative medical finding(s), the more persuasive the
8 medical opinions or prior administrative medical finding(s) will be.

9 (2) Consistency.

10 The more consistent a medical opinion(s) or prior administrative medical
11 finding(s) is with the evidence from other medical sources and nonmedical sources
12 in the claim, the more persuasive the medical opinion(s) or prior administrative
13 medical finding(s) will be.

14 Dr. Genthe concluded that Plaintiff appeared to meet DSM-5 criteria for
15 Schizoaffective Disorder, depressive type, Autism Spectrum Disorder, Attention
16 Deficit Hyperactivity Disorder, Post Traumatic Stress Disorder and Gender
17 Dysphoria. Dr. Genthe noted that Plaintiff's perceptions was not within normal
18 limits nor was her memory. Ultimately, Dr. Genthe found that Plaintiff was
19 significantly limited in her ability to: (a) understand, remember, and persist in tasks
20 by following detailed instructions; (b) perform activities within a schedule,
21 maintain regular attendance, and be punctual within customary tolerances without
22 special supervision; (c) adapt to changes in a routine work seeing; (d) be aware of
23 normal hazards and take appropriate precautions; communicate and perform
24 effectively in a work setting; (e) maintain appropriate behavior in a work setting;
25 complete a normal work day and work week without interruptions from
26 psychologically based symptoms, and (f) set realistic goals and plan independently.
27 Dr. Genthe concluded that Plaintiff's extremely low intellectual abilities were
28 likely to interfere with her ability to function in employment positions.

1 Dr. Genthe's conclusions are consistent with the longitudinal record and
2 supported by his evaluation, which included objective testing. As such, the ALJ
3 erred in not finding Dr. Genthe's opinion persuasive.

4 This, in turn, caused the ALJ to erroneously conclude that Plaintiff did not
5 meet Listing 12.05B.

6 **b. Whether Plaintiff meets Listing 12.05B**

7 Listing 12.05B is met by satisfying the following:

8 1. Significantly subaverage general intellectual functioning evidenced
9 by a or b:

10 (a) A full scale (or comparable) IQ score of 70 or below on an
11 individually administered standardized test of general intelligence; or

12 (b) A full scale (or comparable) IQ score of 71-75 accompanied by a
13 verbal or performance IQ score (or comparable part score) of 70 or below on
14 an individually administered standardized test of general intelligence; and

15 2. Significant deficits in adaptive functioning currently manifested by
16 extreme limitation of one, or marked limitation of two, of the following
17 areas of mental functioning:

18 (a) Understand, remember, or apply information; or

19 (b) Interact with others; or

20 (c) Concentrate, persist, or maintain pace (see 12.00E3); or

21 (d) Adapt or manage oneself, and

22 3. The evidence about your current intellectual and adaptive
23 functioning and about the history of your disorder demonstrates or supports
24 the conclusion that the disorder began prior to your attainment of age 22.

25 Here, the ALJ erred in finding that Plaintiff did not meet Listing 12.05B.

26 Plaintiff satisfied Paragraph 1 because she has significantly subaverage general
27 intellectual functioning as evidence by her IQ and she satisfied Paragraph 2
28 because based on Dr. Genthe's evaluation and the longitudinal record, Plaintiff has

1 marked limitations in her ability to understand, remember or apply information,
2 concentrate, persist or maintain pace, and adapt or manage oneself. Evidence that
3 Plaintiff was in special education throughout her schooling demonstrates that her
4 intellectual deficits began prior to age 22.

5 **VII. Remand for Immediate Award of Benefits**

6 Because the ALJ erred in failing to find that Plaintiff met Listing 12.05B, a
7 remand for an immediate calculation and award of benefits is appropriate.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. For docket purposes, Plaintiff's Opening Brief, ECF No. 11, and
10 Reply Brief, ECF No. 17, are **GRANTED**.

11 2. For docket purposes, the Commissioner's Brief, ECF No. 16, is
12 **DENIED**.

13 3. The decision of the Commissioner is **reversed** and **remanded** for an
14 immediate calculation and award of benefits.

15 4. Judgment shall be entered in favor of Plaintiff and against Defendant.

16 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
17 file this Order, provide copies to counsel, and **close** the file.

18 **DATED** this 29th day of June 2023.



22 A handwritten signature in blue ink that reads "Stanley A. Bastian".
23

24 Stanley A. Bastian
25 United States District Judge
26
27
28